

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LOUISIANA-PACIFIC CORPORATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos 82-18 & 82-42

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the consolidated appeal from the issuance of three civil penalties each in the amount of \$250 for alleged violations of Sections 9.03(b)(1) and 9.15(a) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, presiding, and David Akana at a formal hearing in Lacey, Washington on June 7, 1982.

Appellant was represented by its attorney Kent Studebaker; respondent was represented by its attorney, Keith D. McGoffin. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
5 certified copy of its Regulation I and amendments thereto, which are
6 noticed.

7 II

8 On December 2, 1982, at about 3:08 p.m., respondent's inspector
9 notice a tan-colored plume rising from appellant's site at 3701 Taylor
10 Way in Tacoma. After positioning himself, he observed the plume which
11 was coming from baghouse vents on appellant's shavings bin and
12 recorded opacities ranging from 35 to 50% for eleven consecutive
13 minutes. After discussing the matter with appellant's plant manager,
14 the inspector issued a Notice of Violation. On January 12, 1982,
15 respondent sent by certified mail Notice and Order of Civil Penalty of
16 \$250 for the alleged violation of Section 9.03 of respondent's
17 Regulation I. Order of Civil Penalty is one of the subjects of the
18 consolidated appeals.

19 III

20 Section 9.03 of respondent's Regulation I makes it unlawful for
21 any person to cause or allow the emission of any air contaminant for a
22 period totaling more than three minutes in any one hour which is of an
23 opacity equal to or greater than 20%.

24 IV

25 On January 20, 1982, at about 10:12 a.m., respondent's inspector
26 observed airborne particulate matter (dust) issuing from baghouse

1 vents on appellant's shavings bin. No reasonable precautions were
2 being taken to prevent the particulate matter from becoming airborne.
3 After discussing the matter with appellant's plant manager, the
4 inspector issued a Notice of Violation. On January 29, 1982,
5 respondent sent by certified mail a Notice and Order of Civil Penalty
6 in the amount of \$250 for the alleged violation of Section 9.15(a) of
7 respondent's Regulation I.

8 V

9 On April 2, 1982, at about 10:10 a.m., respondent's inspector
10 observed airborne particulate matter (dust) issuing from baghouse
11 vents on appellant's shavings bin. No reasonable precautions were
12 being taken to prevent the particulate matter from becoming airborne.
13 After discussing the matter with appellant's plant manager, the
14 inspector issued a Notice of Violation. On April 20, 1982, respondent
15 sent by certified mail a Notice and Order of Civil Penalty in the
16 amount of \$250 for the alleged violation of Section 9.15(a) of
17 respondent's Regulation I.

18 VI

19 Section 9.15 makes it unlawful for any person to cause or permit
20 particulate matter to be handled, transported or stored without taking
21 reasonable precautions to prevent particulate matter from becoming
22 airborne.

23 VII

24 The evidence clearly shows that appellant has not taken reasonable
25 precautions to prevent the particulate matter in the shavings baghouse

1 from becoming airborne. The baghouse was designed to catch the
2 particulate matter in bags to prevent it from becoming airborne.
3 However appellant's predecessor allowed the particulate control
4 equipment in the baghouse of the shavings bin, which receives shavings
5 from the planing mill to become inoperative. The motor which operated
6 the equipment had been completely removed.

7 Appellant upon acquiring the mill and the appurtenant baghouse in
8 the mid-1970's did nothing to restore the particulate control
9 equipment in the baghouse to an operating condition. Respondent took
10 no action until September 16, 1982, when its inspector for the Tacoma
11 industrial area made an inspection of the mill and informed the plant
12 manager that the baghouse should be put in condition to properly
13 control particulate matter. The mill was not operating when the
14 inspection was made and no notice of violation was issued at that time.

15 On December 22, 1982, the same inspector noted that particulate
16 matter was being emitted from the baghouse and issued the Notice of
17 Violation of Section 9.03, covered by Finding of Fact II. Appellant
18 contends that since it was making an effort to locate and install the
19 necessary equipment and motor that it was taking reasonable
20 precautions to prevent the escape of particulate matter. This defense
21 was also raised as to the two alleged violations of Section 9.15(a),
22 which occurred on January 20, and April 2, 1982.

23 VIII

24 Any Conclusion of Law which should be deemed a Finding of Fact is
25 hereby adopted as such.

26 From these Findings the Board enters these

1 CONCLUSIONS OF LAW

2 I

3 Appellant violated Section 9.03 of Regulation I as alleged, on
4 December 22, 1982, by allowing or causing an air emission of smoke in
5 excess of the limits established by the regulations.

6 II

7 Appellant violated 9.15(a) of Regulation I as alleged on January
8 20, and April 2, 1982, by allowing particulate matter to become
9 airborne without taking reasonable precautions to prevent it.

10 III

11 Taking reasonable precautions is not a defense to allowing
12 emissions of an opacity which is in violation of Section 9.03.

13 IV

14 Under the provisions of Section 9.15(a) taking reasonable
15 precautions is a defense to a charge of allowing particulate matter to
16 become airborne. In this case the appellant did not take reasonable
17 precautions. It allowed the baghouse to remain inoperable, with no
18 motor and no bags for several years. The fact that appellant
19 belatedly began to take steps to rectify the situation after
20 respondent's inspection on September 16, 1982, does not constitute
21 taking reasonable precautions within the meaning and intent of Section
22 9.15.

23 V

24 The three civil penalties each in the amount of \$250 should be
25 affirmed.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 82-18 & 82-42

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

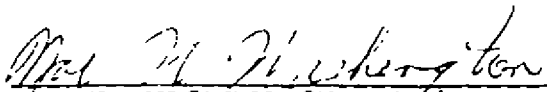
From these Conclusions the Board enters this

ORDER

The three civil penalties each in the amount of \$250 are affirmed.

DATED this 16th day of June, 1982.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Lawyer Member